defendant secured for himself the benefit of a contract which should have inured to the firm; and he should account therefor. *Miller* v. *O'Boyle*, 89 Fed. 140 (Circ. Ct., W. D. Pa.); *Williamson* v. *Monroe*, 101 Fed. 322 (Circ. Ct., W. D. Ark.); *Holmes* v. *Darling*, 213 Mass. 303, 100 N. E. 611. *Cf.* as to joint adventures, *May* v. *Hettrick Bros. Co.*, 181 App. Div. 3, 167 N. Y. Supp. 966; *Stem* v. *Warren*, 185 App. Div. 823, 174 N. Y. Supp. 30. See *Mitchell* v. *Reed*, *supra*, at 126, 137; LINDLEY, *op. cit.*, 366. The account should include the good will of the business. *Cf. Donleavey* v. *Johnston*, 24 Cal. App. 319, 141 Pac. 229. It should include the difference between the price actually paid for the partnership chattels, and their fair value; for a partner may not purchase firm personalty without making a full disclosure. *Jones* v. *Dexter*, 130 Mass. 380. Moreover, since a full disclosure was not made, the adjustment of accounts between the partners cannot be considered final. *Krebs* v. *Blankenship*, 73 W. Va. 539, 80 S. E. 948. *Cf. Stem* v. *Warren*, *supra*; *Jones* v. *Waring*, 200 Pac. 908 (Oreg.). So the recovery should include a share of the defendant's profits. *Filbrun* v. *Ivers*, 92 Mo. 388, 4 S. W. 674. But see 33 HARV. L. REV. 1070, 1075.

PUBLIC SERVICE COMPANIES — RIGHTS AND DUTIES — DISCRIMINATION BY TERMINAL COMPANY BETWEEN TRANSFER COMPANIES. — A railroad commission, seeking mandamus to compel the performance of its order, alleged: that the defendant terminal company checked baggage on claim checks issued by one transfer company, but required identification of baggage by passengers employing other companies; that the commission had found this practice an unreasonable discrimination against the latter passengers; that it had ordered the defendant to issue triplicate checks to all licensed transfer agents in the city, and to check baggage on receipt of stubs. It did not allege that the defendant had corporate power to instal the required checking system. *Held*, that the writ be quashed. *State* v. *Jacksonville Terminal Co.*, 89 So. 641 (Fla.).

It would seem that power to instal the checking system might fairly be implied from the defendant's charter as a terminal company. *Jackson Lumber Co.* v. *Trammell*, 199 Ala. 536, 74 So. 469; *Jacksonville, etc. Ry. Co.* v. *Hooper*, 160 U. S. 514. See 1 MORAWETZ, PRIVATE CORPORATIONS, 2 ed., §§ 320, 362, 364, 365, 367a. The defendant would probably, by reason of its economic situation, be subject even at common law to the duties of a business "affected with a public interest." *Cf. Watts* v. *Boston & Lowell R. R. Corp.*, 106 Mass. 466; *Inter Ocean Publishing Co.* v. *Associated Press*, 184 Ill. 438, 56 N. E. 822. Certainly the legislature may, as it has done, subject it to such duties, including the duty not to discriminate unfairly among those whom it serves. See 1920 FLA. REV. GEN. STAT., §§ 4616, 4617, 4618; *State* v. *Jacksonville Terminal Co.*, 41 Fla. 377, 27 So. 225. It may be argued that a *bona fide* refusal to exchange its receipts for the receipts of any transfer company except those it has reason to trust should not be regarded as unfair discrimination; that it is an incidental discrimination, designed to improve service, and is no more objectionable than the practice of excluding certain hack companies, for instance, from the defendant's premises. *Cf. Clisbie* v. *Chicago, R. I. & G. Ry. Co.*, 230 S. W. 235 (Tex. Civ. App.); *Thompson's Express & Storage Co.* v. *Mount*, 111 Atl. 173 (N. J.); *Missouri Pacific R. R. Co.* v. *Kohler*, 107 Kan. 673, 193 Pac. 323. *Cf.* 12 HARV. L. REV. 280. Probably, however, the purpose of the discrimination is less protection than monopoly. The commission found it unfair. The court seems to have denied this finding the consideration to which it is entitled. See 1920 FLA. REV. GEN. STAT., § 4618; *State* v. *Florida East Coast Ry. Co.*, 67 Fla. 83, 64 So. 443.

PUBLIC SERVICE COMPANIES — RIGHTS AND DUTIES — STRIKE AS AN EXCUSE FOR FAILURE TO FURNISH SERVICES. — A statute imposes upon electric

light companies the duty of furnishing power upon proper application, and provides a penalty for failure to comply, with a proviso that the penalty shall not be imposed "when in the opinion of the court the default was caused by inevitable accident or *force majeure*." The defendant's employees refused to connect the complainant's building because it was wired by non-union men. It was found that if the defendant had discharged the men thus refusing, all of his employees would have gone on strike; and it would have been difficult or impossible to replace them. The defendant was convicted on information under the statute. *Held*, that the conviction be sustained. *Hackney Borough Council* v. *Dore*, 152 L. T. 383 (K. B.).

No clear principle has yet been enunciated for determining what will excuse the performance of a public utility's common-law or statutory duty to furnish services. It is clear that Acts of God, or *vis major*, will excuse. *Gray* v. *Wabash R. Co.*, 119 Mo. App. 144, 95 S. W. 983. The principal case may be taken to mean that, under the English statutes, *vis major* alone will excuse, and that a strike of this sort is not *vis major*. But whether the American cases at common law apply similar rules is far from clear; principles have not been stated with care. Strikes conducted by means of force and violence are held to excuse. *Pittsburgh, etc. R. Co.* v. *Hollowell*, 65 Ind. 188; *Geismer* v. *Lake Shore R. Co.*, 102 N. Y. 563; *Galveston, etc. R. Co.* v. *Karrer*, 109 S. W. 440 (Tex. Civ. App.). But a peaceful strike for higher wages is no excuse. *People* v. *N. Y. Central R. Co.*, 28 Hun (N. Y.), 543. One court has held a strike an excuse without considering its nature. *Murphy Hdw. Co.* v. *Southern R. Co.*, 150 N. C. 703, 64 S. E. 873. See *Southern R. Co.* v. *Atlanta Sand Co.*, 135 Ga. 35, 54, 68 S. E. 807, 816. A strike boycotting cars of a connecting carrier — a case closely analogous to the principal case — was held an excuse. *Chicago, B. & Q. R. Co.* v. *Burlington, etc. R. Co.*, 34 Fed. 481 (Circ. Ct., S. D. Ia.). It seems impossible to reconcile all these decisions. It may be suggested, however, that the line be drawn between legal and illegal strikes. A strike like that in the principal case would, in most jurisdictions, be held illegal. *Duplex Printing Co.* v. *Deering*, 254 U. S. 443; *Burnham* v. *Dowd*, 217 Mass. 351, 104 N. E. 841; *Purvis* v. *United Brotherhood*, 214 Pa. St. 348, 63 Atl. 585. *Contra, Parkinson* v. *Building Trades Council*, 154 Cal. 581, 98 Pac. 1027. See *Bossert* v. *Dhuy*, 221 N. Y. 342, 117 N. E. 582. For England, see TRADE DISPUTES ACT, 1906, 6 EDW. 7, c. 47. Any such suggestion, however, but illustrates the futility of leaving such complicated matters of large public concern to the courts. Such delicately balanced questions are primarily subjects for administrative determination. See 35 HARV. L. REV. 450.

SUBROGATION — EFFECT OF SECOND MORTGAGE ON THE RIGHTS OF A PARTY SUBROGATED TO THE SECURITY OF THE FIRST MORTGAGEE. — To secure a debt, D, holding an unincumbered fee in Blackacre, executed a first mortgage upon it in favor of C, who had the mortgage duly recorded. In the jurisdiction, it gave C a legal lien on the property. D then misapplied money belonging to S in partially paying the debt, C receiving it without notice of the wrong. This payment was not recorded. Later, D executed a second mortgage on Blackacre to P, who paid value and had no knowledge of the mortgage to C. D died, and in administration proceedings against his estate, after the remainder of C's claim had been fully satisfied, S seeks to come in ahead of P against the security, claiming subrogation to the rights of C under the first mortgage. *Held*, that S recover. *McCullough* v. *Elliott*, [1921] 3 W. W. Rep. 361.

For a discussion of the principles involved, see NOTES, *supra*, p. 596.

TRADE-MARKS AND TRADE NAMES — PROTECTION APART FROM STATUTE — USE OF TRADE-MARK ON GENUINE GOODS. — The plaintiff purchased the American business of a French firm, which sold, under trade-marks registered in the